appeared under a different form. He might add that besides the petitions mentioned in the margin of the Select Committee's report, there were others sent in the vernacular, which, being unaccompanied with translations required by the rules of the Council, ought to have been returned; but as the Committee were desirous of having all the information possible on the subject, they had the petitions translated for their own information, though of course those petitions could not be presented to the Council. In conclusion he would beg to say that he should be prepared to proceed with the Bill at the first meeting after the Dewali holidays, which would afford ample time to consider the measure in its amended form.

The Council met at Bombay on Tuesday, the 3rd November 1868, at noon.

The Honourable Mr. Ellis moves the second reading of the Act for City Surveys and amendment of Bombay Survey and Settlement Act, 1868.

The Honourable Mr. ELLIS, in moving the second reading of Bill No. 3 of 1868, "A Bill to make further provision regarding the application of (Bombay) Act No. I. of 1865 to Towns and Cities, and to restrict the application of (Bombay) Acts Nos. II. and VII. of 1863 in Towns and Cities, and otherwise to amend (Bombay) Act No. I. of 1865," said that this Bill had been already fully discussed by the public outside, and by the members of the Council upon the occasion of the first reading, and also in Select Committee, where the Committee had the advantage of hearing a gentleman who appeared upon the part of "the Bombay Association," and discussed the Bill in all its details. This being the case, it was not required of him now to detain the Council at very great length in explaining the provisions of the Bill: but there were some points upon which it perhaps might be expected that he should offer explanation. It had been asserted by those who at the outset opposed the Bill, that an entirely novel principle was being asserted when it was assumed in this Bill that Government had the right of taxing and deriving revenue from lands within the limits of towns and cities. Now he (Mr. ELLIS) did not mean to say for a moment that there were not many lands in towns and cities, a very large majority in fact of lands in towns and cities, in respect to which the Government, at present, had no right whatever to claim or obtain assessment or land revenue. But he would maintain that this right, as against Government, was not an inherent right, but a right which had been acquired in the same way as in other cases, either by grant or by prescription derived from long possession. He need not go back to the days

of Manu and the primitive ages, to discuss whether Government was the original lord of the soil, or whether any man who first dug that soil had the right to the land which he so occupied. Had it been a question of the right to mountain tops, jungles, and waste deserts, occupied for the first time by man, there would be room for argument perhaps, for in those places nature had done everything and man had done nothing. But it was strange that the argument had been applied to towns and cities which owed everything to civilization and to Government, and where it would be impossible to maintain law and order for a single day if all open spaces and open ground were to be considered, not as he (Mr. ELLIS) asserted they were, the property of the public, held in trust for the public by Government, but the property of the first man who chose to seize and take possession of them. It must be borne in mind that cities had not sprung up at once out of jungle wastes. It was true many cities in India had been created at the sovereign will of a despot in a very short time; the dwellers in a city thus built could have looked to none but the sovereign of the city as the giver of the land they held. But to take the ordinary case of the slow growth of a city—how was the original hamlet found to have grown to be worthy the name of a city? At first, perhaps there might have been a few squatters gaining their livelihood by the cultivation of the lands round their huts, and then fields were subsequently taken up for building houses, or house-building began on an otherwise useless site; in either case it was the policy of the Government of the time to attract settlers, and by the conveniences offered to draw the mass of population to a particular locality, and the first thing a Government had had to do, was to offer free sites. Thus persons who had come with the permission, if not at the express call of Government, had settled and made themselves houses upon spots assigned for the purpose by the Government. By degrees those cities had grown, and eventually it had been necessary to include in them, not only unculturable land, but even cultivated fields in their neighbourhood. It was within the knowledge of every one in the Council that at Poona, for instance, there were places, which a very few years ago were mere bajree fields, but which were now covered with bungalows. It was in this way that cities grew, and there could be no peculiarity in the land of cities to exempt them from the ordinary rules of land assessment. The lands within cities had been gradually taken in from the outside, and, like those outside lands, were liable to assessment by Government, unless a right to exemption had been acquired by specific grant or by long possession giving a prescriptive title. It was precisely for this state of things that the old regulations were framed. Regulation XII. of 1827 was, to his (Mr. ELLIS') apprehension, quite clear in including within the

lands over which Government had the power of assessment all land of whatever description, whether applied to agricultural or to other purposes, unless such lands were exempt under certain rules explained in the latter chapters of that Regulation. And that this was no fanciful view, might be clearly proved from the fact that from the time the Regulation was enacted, until it was cancelled by the passing of Act VII. of 1863, the officers of Government acted upon it. It could not be known to those who had argued to the contrary effect, that it was the constant practice in the largest cities of Guzerat, for the Collectors to serve notices upon the holders of such lands, just as such notices were served on lands outside a city, whenever it was supposed that the holders were enjoying an exemption from assessment on insufficient grounds. The notice was to the effect, that on failure to prove a title within two months, the land would be assessed, and frequently such assessment was carried into effect, the holder having the right of appeal to a civil court. He (Mr. ELLIS) had seen many notices of this description which had been served upon the holders of land within the city walls of Ahmedabad, and he had written to the Settlement Officer at Ahmedabad to send half a dozen of such notices for inspection with reference to the present discussion. Mr. Bulkley sent five or six notices, all of which certainly referred to lands within the city walls, and might or might not refer to lands useful only for building sites, but regarding one there could be no doubt, for it was a notice served on a holder of land at the Teendarwaza of Ahmedabad, which, as all who knew Ahmedabad must be aware, was in the heart of the city, in a part very thickly populated and very thickly built upon. Out of the notices served in former days, some were decided in favour of the claimants, and some in favour of the Government, and a great many were still undecided when the Regulation ceased to be law. There seemed therefore to be no doubt but that, not only according to first principles would it be natural to expect Government to have the right to assess lands in cities, but the same view was affirmed by the Regulation of 1827, and unquestionably acted upon from the date when that regulation was first passed until it was cancelled. But although the right to assess existed, yet the principle of exempting lands built upon from assessment had been very generally acted upon by Government for reasons of policy. In all small villages, for instance, it would be bad policy when the whole, or nearly the whole of the inhabitants, consisted of persons engaged in cultivation, to put any extra assessment on the lands upon which their houses were built. It was not necessary to assess such house lands, because the contributions to the revenue were taken in another shape. As an illustration of this, he would call to

recollection Bombay Act V. of 1862, which was passed in order to prevent those who held, free of assessment, sites upon which a house was built, from alienating such building sites, apart from the fields attached to them. The Act referred to a certain class of villages in Broach, in which the Bhagdaree system prevailed. In these villages the houses were on sites rent free, but attached to cultivated lands paying assessment. It was not uncommon, in execution of a decree, to attach a house and site, and the purchaser would make the holder pay rent, though the site ought to have remained free while the obligation in respect to the cultivated and assessed land remained untouched. To prevent the alienation of a free site except with the whole of the cultivated land in the Bhag, to which it belonged, Act V. of 1862 was passed. This example would show that the custom of giving a free site in villages, was connected with the policy of giving cultivators land for a house, without the obligation to pay rent. Moreover, there was another large class of villages in Gujrat, called Narwadaree, which had recently been settled. In these, it had been the custom to take rent for land upon which the sub-tenants' houses stood. It was desired by the Government that in the same way as in other small villages, this rent or assessment should be remitted, but the Narwadars objected, and thereupon the Government could only say that as assessment had hitherto been paid the Narwadars might still continue to collect it, and the assessment so levied would form part of the assets upon which the assessment to be fixed by Government on the whole village, would be based. Accordingly, in those villages to this day, the Government continued to levy a share of assessment upon the land on which houses were built, because the Narwadars who had also a right and interest in such assessment refused to give up their share of it. These examples showed that even in small villages, the land on which houses were built were by no means held free of all obligation to pay Government assessment. There were other villages in which the custom of paying assessment on house land under the name of Ghurbharoo, still obtained. In larger towns there was the same right of Government to assess, and if the amount of assessment was not large, there was more than one reason for this. In the first place, as before said, the greater part of the population received free sites, or even if they took the sites without permission they had by long prescriptive right a title against any Government. In the second place it was very commonly the practice of Government to dispose of their right and interest in the rent outright, and it was usual for those who were about to build, to ask that the land should be sold to them outright, and in this way, not only in the city of Ahmedabad, but in all Gujrat, many

pieces of land had been disposed of by auction. Thus in many instances, in towns, all right to the land or to assessment on it was given up by Government. In Broach also at this very time, there were more than 300 holdings, embracing upwards of 35,000 square yards, paying revenue and assessment to Government. In Surat, likewise, there was land similarly situated. Although the number of these holdings was not very great, yet this was an additional proof that it was no new principle for the Government to take assessment from lands in cities. Indeed it was not easy to see how any distinction could be made; as in the instance of Poona, it was no uncommon thing for culturable lands to be included within the limits of towns. These lands, before liable to assessment, could not by the mere fact of their inclusion in city limits become exempt. Such lands at least must be admitted to be liable to assessment. And again, spaces not occupied within the limits of cities must be at the disposal of Government, for there was no one else to claim them. Government had always disposed of such lands without question. If this be the state of the case, it must be admitted that the provisions regarding assessment in the Bill now before the Council, conferred an absolute boon. If the laws which were applicable to land assessment had been strictly applied in cities, there would have been a great deal of dissatisfaction, not without reason, and it was on this account that some modification was necessary. It has been supposed that Act I. of 1865, referred to in the present Bill, could not be applicable to lands in a city, because no express mention was made of such provisions therein, but at the very time when Act I. of 1865 was passed, the city survey of Ahmedabad was in full operation. It could not be said, therefore, that city surveys were a mere afterthought, and if there was no specific mention made of cities in the Act, it was rather from the larger and more important subject of agricultural assessment generally having engrossed the attention of the framers of the Act, that no specific allusion was made in the Act to the surveys in cities, and although surveys were being carried on in cities, to meet the difficulties that had arisen in regard to assessment, yet at the time it appeared not to have been known that any special legislation would be needed on the subject. The work which had been begun was carried on without any special enactment, but as the work progressed it was clear that it could not be completed without further legislation. The Bill as altered by the Committee was, as stated in the report, very much modified, and he had every reason to believe that the more intelligent of the persons who at first objected to the Bill were now thoroughly satisfied that its provisions, as amended, were exceedingly liberal, and that in its present modified form it was one which the Council need not hesitate to pass. He might mention

that Mr. Shantaram Narayen, who wrote letters to the Council raising objections on the first introduction of the Bill, had in a recent letter stated that the Bill was, as modified, so satisfactory that any further discussion would be mere speculation. The principal alterations were detailed in the report now before the Council and on these he need not detain the Council any longer. There were, however, one or two sections containing general provisions, on which he would make a few remarks as he had not had the opportunity of doing so before. He had been asked with reference to Section XX. why Section 51 of Act I. of 1865 should be repealed. The reason was this. He was in the Council at the time that Bill was passed, and happened to know exactly how that section was inserted. It was not in the original draft, but at the conclusion of a lengthened meeting one of the members of the Council said that Regulation XVII. of 1827 was so closely connected with the Bill then before the Council, that it would be well to read the latter as part of the former. As a mere technicality this was done, without any thought of the consequences. But Act I. of 1865 provided an entirely new machinery for the assessment of lands; this machinery was intended to supersede the machinery of Regulation XVII. without however interfering with the unrepealed portion of Regulation XVII. on any points in which the new Act was inapplicable. The effect was that there became two concurrent modes of proceeding, one under Regulation XVII. and another by the Act of 1865. Instances had occurred in which the Collector maintained his right under the old Regulation to interfere in matters of assessment, whereas these matters were by the new Act entrusted to the Survey Department. With the view to prevent any such collision, and the clashing of the two modes of procedure, it had been thought necessary to repeal this section. He might state that there was no ground for the apprehension that, by the removal of this section, the title to hold land exempt from assessment would be affected in any way, because the provisions of Regulation XVII. relating thereto had been entirely repealed by another Act, and were no longer applicable. These remarks would make it sufficiently clear that there was reason for repealing Section 51 of Act I. of 1865, which was, as he could testify put in hastily without any particular object, and without calculation of the effect it would have on the Act in which it was inserted. Section 17 of the Bill was also one which required notice, because it also altered a section of general application in Act I. of 1865. It was found necessary, in order to prevent undue splitting up of survey fields, to make provision to the effect that in case of a decree of a Court dividing such estates, the Court should not have authority to split up the fields once formed by the survey. But the Act of 1865 went further than was necessary, and in the

Southern Mahratta country inconvenience had been found to arise from the stringency of the clause. To remedy this a new section had been inserted. The object of the provision was simply to prevent the Courts interfering so far as to cut up fields into minute sub-divisions, smaller than public policy, and due regard to a good system of agriculture allowed. The present amendment confined the restriction to such minimum as may be fixed for each class of land in respect to the nature of the cultivation. For instance, there was a difference between a large dry crop field and a small richly cultivated piece of garden land, but in every case there was a minimum below which sub-division was not possible, or if possible, not expedient. A suggestion had been made to publish these minima in the *Government Gazette*, but the great majority of the agricultural population were not readers of the *Government Gazette*, and when the sections were considered in detail, he would propose that the record of such minima should be kept in the Mamlatdar's office and be open to the public, which would be much more effectual than publishing in the *Government Gazette*. There was another clause which required some notice, *viz.*, Section 18, which referred to Talookdaree estates in Guzerat. It had been found there, that owing to the inability of Government to divide estates, considerable hardships were often suffered by the small holders, owing to the great power and influence of the larger holders. The section provided further for the cost being paid out of the estates. There was only one other clause which required notice, *viz.*, Section 19, which had been inserted on the application of Mr. Hormusjee Jehanghirjee, the proprietor of certain alienated villages in Salsette, who pointed out that the Act gave no power to Government to confer upon the holder of a village the authority exercised by village officers, in consequence of which omission he was put to considerable difficulty and inconvenience owing to the interference of the village officers. Since the clause was framed, Mr. Hormusjee had sent another letter saying that what he wished for, was not that the power should be given to Government to delegate such authority, but that it should be incumbent upon the Government to give it to the holders of the villages. Now he doubted whether it was right to go so far. It seemed that under the Act in its present form there was no means of giving such power to any but the native revenue officers, and all that was wanted was to enable Government to delegate it to others. As a rule Government would never give it otherwise than to the holder of a village, but there might be instances of joint holdings or a case in which there were two sharers at enmity, and there might be a difficulty in giving the power to one of them; and it would be still more difficult to give it to both of them. It was better to keep the clause as it was. With these remarks he moved that the Bill be read a second time.

The Honourable Mr. MUNGULDASS NUTHOOBHOY observed that His Excellency the President was aware that when this Bill was first introduced there was great opposition to it, not only from the public but from members of the Council—among whom, he (Mr. MUNGULDASS) was one. In the Select Committee they could not agree to one great point, about which the honourable member was, and still remained, of the same opinion, namely, that previous Regulations included all lands within cities and towns. He (Mr. MUNGULDASS) differed from him, and had the misfortune to be of the same opinion still. But the Honourable Mr. Ellis, although he would not carry out all the improvements suggested to him, had made many alterations. He would not agree with all the objections, but he has been pleased, in deference to the wishes of many people in the interior, to make so many concessions that in its present form the Bill was quite different from what it was, as His Excellency would perceive. The Honourable Mr. Ellis was pleased to offer this compromise, on condition that he (the Honourable Mr. MUNGULDASS) would agree to the compromise which he offered, and he (Mr. MUNGULDASS) had consented to that, knowing that the concessions were so very great as almost to meet the wishes of the petitioners, and knowing, too, that it was to the interests of his countrymen to accept the compromise rather than incur the risk of having the point discussed in Council, where in every probability he would have been in a minority, owing to the great weight which the honourable member's opinion would carry. Therefore he (Mr. MUNGULDASS) had no opposition to offer to the second reading.

Bill read a second time and considered in detail.

The Bill was read a second time and considered in detail.

In Section XVII., line 27, after the word "Government," the following words were inserted: "A record of the minima fixed shall be kept in each Talooka kutcherry, and shall be open to the inspection of the public at reasonable hours."

In Section XIX., line 9, after the word Notification, the following words were added: "or in any subsequent Notification."

In Section XXI. of the Bill the Honourable Mr. ELLIS said, with regard to the definition of towns and cities, it had been suggested that the words of the section should be qualified by a proviso requiring that the towns should contain a certain number of inhabitants, but no particular object would be obtained thereby, for if small towns were excluded from the operation of the Act, they would simply fall under Act I. of 1865 and Act VII. of 1863. There would be no object, therefore, in taking such towns out of this Bill, and it would be of no benefit to them. He thought it might safely be left to Government to determine the matter.

The third reading of the Bill was ordered to come on at the next meeting of the Council.

The Council met at Bombay on Friday, the 13th November, at mid-day.

Mr. Ellis moves that the Bill for City Surveys and Amendment of Bombay Survey and Settlement Act, 1868, be read a third time.

The Honourable Mr. ELLIS, in moving the third reading of Bill No. 3 of 1868 (*a Bill to make further provision regarding the application of (Bombay) Act No. I. of* 1865 *to Towns and Cities; and to restrict the application of (Bombay) Acts Nos. II. and VII. of* 1863 *in Towns and Cities; and otherwise to amend (Bombay) Act No. I. of* 1865), said there were two verbal alterations that were necessary in the Bill. In Section XVI., line 2, the words were, "Section XLV. of Act I. of 1865 is hereby repealed." It should be "Section XLV. of (Bombay) Act," &c. The same amendment had to be made in Clause 3, line 58, of Section XVII.

Bill read a third time and passed.

These amendments were made, and the Bill was read a third time and passed.

BOMBAY.

ACT No. IV. OF 1868.

PASSED BY THE GOVERNOR OF BOMBAY IN COUNCIL.

[*Received the assent of the Governor of Bombay on the 4th December* 1868, *and of the Governor General on the 11th January* 1869, *and published by the Governor of Bombay on the 28th January* 1869.]

An Act to make further provision regarding the application of (Bombay) Act I. of 1865 *to Towns and Cities; and to restrict the application of (Bombay) Acts II. and VII. of* 1863 *in Towns and Cities, and otherwise to amend (Bombay) Act I. of* 1865.

Preamble.

WHEREAS it is desired to make further provision regarding the application of Bombay Act I. of 1865 to Towns and Cities, and to restrict the application of (Bombay) Acts II. and VII. of 1863 and I. of 1865 in Towns and Cities, and otherwise to amend (Bombay) Act I. of 1865: It is enacted as follows :—

Bombay Act I. of 1865 applicable to Towns and Cities.

I. (Bombay) Act I. of 1865 is hereby declared applicable to Towns and Cities.